

amendment, invoke this Nation's highest principles and logic of Federal republican democracy.

Nevertheless, in recent years the Supreme Court has begun a significant departure from those principles, at least when they are applied to tribes. For example, about 6 years ago in the *Cabazon* decision, the dissenting opinion argued that the tribes did not possess certain regulatory jurisdiction unless it was first granted to them by the Congress or the States, an argument in direct contravention to the logic of the McKenna quote. Fortunately for the tribes, the majority in *Cabazon* was compelled to respond to the dissent by saying, and I quote, "That is simply not the law."

Unfortunately, due to changes on the Court, the *Cabazon* dissent has since garnered a majority on the Court, and the logic of our treaties is being subverted in a way that simply cannot be reconciled with this Nation's first principles. As a result, the tribes and their people have suffered.

In conclusion, I would like to say make note that every term the Supreme Court deals with numerous cases affecting all the tribes, and it is a little-known fact that at times the Supreme Court hears more Indian law cases than any other kind of case. We believe, because of that reason, that it is imperative that nominees to the Supreme Court express their views on these matters and bear an understanding of how this field of law comports with our constitutional jurisprudence, in the hopes that the future jurisprudence of nominees, such as Judge Breyer, on matters affecting tribes will comport with those principles that America stands for.

Thank you very much.

[The prepared statement of Mr. Monet follows:]

PREPARED STATEMENT OF THE NATIVE AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Committee, on behalf of the Native American Bar Association, I thank you for the opportunity to present our views on the nomination of Judge Stephen Breyer for Associate Justice of the Supreme Court.

Mr. Chairman, the Native American Bar Association agrees with the statement offered by the Coalition. Like other racial minorities in our society, Indian people daily confront the effects of racial prejudice and discrimination. Nowhere has the cycle been more difficult to break than in the staid field of the law. However, the Native American Bar Association has certain concerns that are somewhat distinct of those affecting other groups in the coalition.

As you all know, Indian people not only constitute a distinct race in American society, but as members of Tribes many Indian people also constitute distinct political entities recognized as such by the United States. Some of our most pressing issues and concerns arise in that capacity.

The relationship between Tribes and the United States flows from solemn treaties made early in this Nation's history. Remarking upon one of those Indian treaties Justice Black wrote: "Great Nations, like great men, keep their word." In an early interpretation of another one of those treaties Justice McKenna penned a sentence of perhaps singular importance to Tribes and the development of federal law dealing with Tribes. He wrote, "Treaties are to be construed as a grant of rights from the Indians, not to them—and a reservation of those not granted."

We ask the committee and the nominee to note how Justice McKenna's wording and logic reflect the words and logic of the Tenth Amendment to the U.S. Constitution: that what is not granted to the Union in the Constitution is reserved to the States or to the people. In other words like the States and their people, Tribes and their people are the source of the respective Tribes' sovereignty, that whatever sovereignty may have transferred in those treaties came from the Tribes, so that the Tribes were the grantors and thus the reservers of sovereignty. Treaties with Tribes, like the Tenth Amendment, invoke this Nation's highest principles and logic of federal republican democracy.

In recent years the Supreme Court has begun a significant departure from those principles, at least when they are applied to Tribes. For example, about six years ago, in the *Cabazon* decision, the dissenting opinion argued that the Tribes did not possess certain regulatory jurisdiction unless it was first granted to them by Congress or the States, an argument in direct contravention to the logic of the McKenna quote. Fortunately for the Tribes, the majority in *Cabazon* was compelled to respond to the dissent by saying, and I quote, "That is simply not the law."

Unfortunately, due to changes on the Court, the *Cabazon* dissent has since garnered a majority on the Court, and the logic of our treaties has been subverted in a way that cannot be reconciled with this Nation's principles of federal republican democracy. As a result, the Tribes and their people have suffered. We are reminded of what American philosopher Felix Cohen once wrote: "Like the miner's canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith."

In conclusion, Mr. Chairman, every term the Supreme Court deals with numerous cases affecting all Tribes, at times hearing more Indian law cases than any other kind. We believe it is imperative that nominees express their views on these matters and bear an understanding of how this field of the law comports with our constitutional jurisprudence. The Native American Bar Association requests the Committee to solicit the nominee's views and to insist upon answers that comport with the principles for which America stands.

Thank you for the opportunity to share our views.

Senator KENNEDY. Thank you very much.
Wilfredo Caraballo.

STATEMENT OF WILFREDO CARABALLO

Mr. CARABALLO. Thank you very much. Good afternoon. The Hispanic National Bar Association appreciates the longstanding relationship that our organization has had with many of the members of this committee and with a lot of its staff. We hope to continue that relationship into the future.

In particular, I would like to publicly thank two members of this committee who have gone out of their way in the past to make statements publicly concerning the need for an Hispanic on the Supreme Court, and those are Senators Biden and Senator Hatch. On behalf of our organization, we would like to thank both of them.

I know that there might not be many Senators here, and I notice, however, that there are staff. I hope that when the testimony is looked at, one fact comes out. We have come together as four organizations in an unprecedented way. We want the members of this committee, and we would like the administration and this Nation to understand and listen to the words that we have used.

We have not called ourselves minority bars. We don't consider ourselves minorities. We are people of color representing over 60 million people in this country, and in the very near future we are going to be the majority in this country and we ask that as you listen to our pleas, you understand that part of that plea is for the generations to come. We are asking that we be treated today the way we hope you will want our children and our grandchildren to treat your children and your grandchildren.

When Justice Blackmun announced his resignation, the Hispanic National Bar Association received many calls from Hispanics around the country. It was universally believed by the members of our organization and others that the 108th Justice to the Supreme Court of the United States was going to be an Hispanic. We believed the promise that the face of justice was finally going to include ours.